

CIVIL SERVICE COMMISSION MINUTES

November 7, 2001

A Regular Meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Mary Gwen Brummitt
Barry I. Newman
Sigrid Pate

Absent were:

Gordon Austin
Roy Dixon

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer
Ralph Shadwell, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES
November 7, 2001

1:30 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
<u>5,6,7,9,10,11</u>	<u>12</u>	<u>7</u>	

COMMENTS Motion by Newman to approve all items not held for discussion; seconded by Pate. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the Public may be present at this
location to hear the announcement of the
Closed Session Agenda

- A. Commissioner Austin: Daniel Marshall, Esq., on behalf of **Martha Martinez-Johnson**, former Senior Clerk, appealing an Order of Removal and Charges from the Health and Human Services Agency.
- B. Commissioner Newman: **Michael Rossler**, former Housing Specialist I, appealing a Final Order of Termination and Charges from the Department of Housing and Community Development.
- C. Commissioner Brummitt: Richard Pinckard, Esq. on behalf of **Marco Carreon**, former Deputy Sheriff, appealing an Order of Termination and Charges from the Sheriff's Department. Verbal interim report to be given in Closed Session only.

REGULAR AGENDA
County Administration Center, Room 358

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and it is approved by the President of the Commission.

MINUTES

1. Approval of the Minutes of the regular meeting of October 3, 2001.
Approved.

CONFIRMATION OF ASSIGNMENTS/REASSIGNMENTS

Assignments

2. Commissioner Austin: **M. Desiree N. Nelson**, former Administrative Trainee, appealing the Final Charges and Order of Termination from the Department of Human Resources.

Confirmed.

3. Commissioner Newman: **Richard Eustace**, Building Maintenance Engineer, appealing an Order of Suspension and Charges from the Department of General Services.

Confirmed.

Reassignments

4. Commissioner Brummitt: Richard Pinckard, Esq., on behalf of **David Schultz**, Deputy Sheriff, appealing an Order of Pay Step Reduction and Charges from the Sheriff's Department. Commissioner Austin originally assigned.

Confirmed.

DISCIPLINES

Findings

5. Commissioner Austin: Daniel Marshall, Esq., on behalf of **Martha Martinez-Johnson**, former Senior Clerk, appealing an Order of Removal and Charges from the Health and Human Services Agency (HHSA).

Prior to the Findings and Recommendations being rendered, Daniel Marshall, Esq., on behalf of Appellant, expressed the need for a job function analysis and suggested that perhaps Employee could be placed into a different classification. Ms. Martinez-Johnson expressed that she was a loyal near-30 year employee and asked that the Commission consider this fact upon rendering its decision.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Incompetency; Cause II - Inefficiency; Cause III - Failure of Good Behavior; and Cause IV - Insubordination. Employee has been a County employee for approximately 29½ years, and at the time of the issuance of the Order of Removal and Charges, she was a Senior Clerk at the Centre City Family Resource Center. The charged incidents occurred primarily in the last quarter of 1998 through the middle of March 2001.

Employee and the Agency stipulated to the truth of the factual allegations contained in the Order of Removal and Charges. Employee contended that the Agency exaggerated the significance of the alleged incidents in an effort to terminate her. At the hearing, she challenged only the level of discipline. Employee also alleged that the Agency failed to comply with the procedure prescribed by the Americans With Disabilities Act and that she did not receive a fair and unbiased Skelly hearing.

Employee's performance appeared adequate until sometime after the death of her husband in 1996. Performance problems surfaced and led to an Order of Demotion and Charges in 1999, pursuant to which she was demoted from Supervising Clerk to Senior Clerk. This Order was appealed to the Commission, and the Order was affirmed.

Employee failed to produce any convincing evidence impugning the impartiality of the Skelly Officer. The fact that the Skelly Officer was the same individual who signed the final order of Removal and Charges does not invalidate her qualification as a Skelly Officer. That Order was signed on the same day as the Skelly Hearing when she would have already been familiar with the Order and Charges. It would have made no difference to the Skelly Officer's ability to fairly hear Employee's case.

Evidence demonstrated that Employee's problems were performance related rather than the result of managerial bias or unfairness. It was proven that the deficiencies in her performance were extensive, and were well documented.

Employee's claim that the Agency violated the Americans With Disabilities Act was found without merit. The record indicated that the Agency accommodated every request from Employee and/or her medical providers.

The charges described in Cause I-IV were proven to be true. It is therefore recommended that the Order of Removal and Charges be affirmed; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Pate to approve Findings and Recommendations; seconded by Newman. Carried.

6. Commissioner Newman: **Michael Rossler**, former Housing Specialist I, appealing a Final Order of Termination and Charges from the Department of Housing and Community Development.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause 1 - Conduct Unbecoming an Officer or Employee of the County of San Diego (unprofessional and intimidating conduct); Cause 2 - Acts Incompatible or Inimical to the Public Service (Inappropriate use of the County's E-Mail); Cause 3 - Absent without Leave; Cause 4 - Discourteous Treatment of the Public or other Employees; Cause 5 - Violating Rules and Regulations relating to Conduct in the Office of Persons in the Classified Service; Cause 6 - Failure of Good Behavior; and Cause 7 - Willful Misconduct that has wasted public goods or supplies.

Employee has worked in the Department as a Housing Specialist I for approximately 6½ years. During most of that period of time, he exhibited excellent work performance and has received formal recognition in several forms. He was not issued a performance appraisal since 1999, however.

Employee's problems began in approximately October of 1999 when he became engaged in a dispute with his supervisor. Also in October, 1999, Employee began to experience difficulties with another employee regarding a DIBBS award nomination. Both the supervisor and employee testified at the hearing that since that time, they both experienced

repeated incidents of conduct by Employee that appeared calculated to physically intimidate them and make them fear for their safety. Employee denied all of the above conduct.

In or about late 2000 or early 2001, Employee was 1 of 12 candidates vying for promotion to the classification of Housing Specialist II. There were 9 promotions. Employee was not promoted due to the above-described behavior with the supervisor and the fellow employee. Nevertheless, the acting Department Director advised Employee that if he refrained from involvement in any further similar incidents or conflicts for a period of 60 days and enrolled in an "anger management" or "conflict resolution" class of his choice, he would be reconsidered for the promotion. Employee rejected the suggestion.

In May of 2001, the above-mentioned supervisor complained to OIA and an investigation ensued. The investigation led to a review of the files in Employee's County-owned computer, which revealed extensive personal use by him of his computer, and included pornographic and ethnically disparaging materials. Department management testified that it was both the quantity and nature of the personal material found on the computer that made Employee's personal use subject to discipline. The nature and extent of Employee's use was so excessive that it is not plausible that he did not know that such use was an inappropriate use of County resources and time.

The investigation also brought to light a tape-recorded meeting between employee and the supervisor above. Employee was notified that taping a conversation without the knowledge of the person being taped is illegal. However, with respect to the tape-recorded conversation between Employee and the supervisor, there was insufficient evidence presented at the hearing to determine whether it was illegal.

About the time OIA concluded its investigation, Employee departed for an approved vacation. However, Employee failed to return to work, and was absent without leave for 2 days. Employee admitted that he purchased his return ticket for two days after the end of his approved vacation and that he never advised the Department of this fact.

The most serious charges against Employee are those pertaining to Board of Supervisors Policy No. A-121 - Violence and Threats in the Workplace. By a preponderance of evidence, the Department substantially proved its charges concerning such violence and threats. The charges were supported by two separate credible victims, repeated and numerous incidents, and witnesses who corroborated the victims' versions of the facts. The seriousness of these charges in and of themselves support termination.

As a result of the above behaviors exhibited by Employee, he became a disruptive influence in the Department, hindering its effectiveness and consuming excessive County resources in the form of the attention expended on his conflicts. Employee is guilty of Cause 1 (except Cause 1(A)(8) and the portion of Cause 1(B) relating to the illegality of the tape recording); Cause 2; Cause 3; Cause 4; Cause 5; Cause 6 and Cause 7. It is therefore recommended that the Final Order of Termination and Charges be affirmed; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Newman to approve Findings and Recommendations; seconded by Pate. Carried.

DISCRIMINATION

7. Stewart Kocivar, S.E.I.U. Local 535, on behalf of **Angela Pantoni**, Protective Services Worker II, alleging disability discrimination by the HHSA and requesting a temporary order maintaining the status quo. (See also No. 10 below.)

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back. Allow the parties to address the status quo concerns at the Commission's November 7, 2001 meeting.

Staff recommendation approved. Commissioner Pate assigned.

Re: Status Quo concerns: Stewart Kocivar, SEIU Local 535, requested the Commission to consider allowing Ms. Pantoni to remain in her current work location, inclusive of the accommodations the Agency has allowed Employee regarding field work.

Pat Pickford and Lynette Mercado for the Agency explained that Employee is not being harmed by her reassignment to the Polinsky Center. She will maintain her current classification but will not be needed in the field, thus eliminating the need to drive during work hours. Ms. Mercado further explained that Medical Standards has notified the Agency that Employee should not drive at this time.

Larry Cook, Executive Officer, advised that since the above Rule VI matter has been assigned, his confidence in a timely and thorough investigation by OIA negates the need to maintain the status quo because the Employee will not be harmed.

Motion by Newman to deny request. Seconded by Pate. Carried.

SELECTION PROCESS

Complaints

8. **Michael Donovan**, appealing his non-selection for the classification of Deputy Probation Officer by the Department of Probation.

RECOMMENDATION: Deny Request.

Michael Donovan spoke before the Commission explaining that he disputes the Probation Department's response to his application for selection to the classification of Deputy Probation Officer. He believes that merit should be shown for his most recent accomplishments, and not be tainted by his actions chronicled several years ago.

Osee Rull, representing the Department, explained that Appellant failed his background investigations in 1995, 1998 and 2001, and for these reasons Mr. Donovan has not been selected by the Probation Department for the classification of Deputy Probation Officer.

Commissioner Newman raised the question of why Appellant was allowed to retake the examination if previous background checks revealed basic character concerns. Mr. Cook explained that an individual is allowed to apply for a classification every time the classification comes up for

examination. Although a new background check is initiated, past background checks may be incorporated.

Motion by Pate to accept staff recommendation; seconded by Newman. Carried.

Newman: Abstained.

Findings

9. **Xavier Eakins**, appeal of removal of his name by the Department of Human Resources from the employment list for Corrections Deputy Sheriff.

RECOMMENDATION: Ratify item No. 9. Appellant has been successful in the appellate process provided by Civil Service Rule 4.2.2.

Item No. 9 ratified.

INVESTIGATIONS

10. Stewart Kocivar, S.E.I.U. Local 535, on behalf of **Angela Pantoni**, Protective Services Worker II, requesting an investigation under Civil Service Rule XI into the personnel practices of the HHSA. (See also No. 7 above.)

RECOMMENDATION: Hold in abeyance pending the outcome of the discrimination investigation.

Staff recommendation approved.

OTHER MATTERS

Seal Performance Appraisal

11. **Janis Bellinger**, Analyst II, HHSA, requesting the sealing of a Performance Appraisal for the period November 29, 1999 to November 29, 2000.

RECOMMENDATION: Grant Request.

Ms. Bellinger addressed the Commission, stressing the untimeliness of her appeal process with the Agency.

Lynette Mercado, on behalf of the Agency, explained that it is aware of the delay in the appeal process, which had been discussed at a previous CSC meeting. The Agency, however, is adamant that the performance appraisal for the period November 1999-November 2000 contains important information regarding that period and should be made a part of Employee's file.

Ms. Bellinger stated that timeliness of the appeal process was the only factor in requesting the sealing of her performance appraisal, at this time. Larry Cook, Executive Officer explained that the appeal process which took from May through October, 2001 is contrary to the "spirit" of the rule. He did, however, state that this particular performance appraisal was fair in terms of documentation, and he hesitates to advise the Commission to seal compelled on time, alone.

Tony Albers, Sr. Deputy County Counsel stated that County departments have difficulty regarding the time element outlined in Rule V, and suggested that the Commission consider amending said Rule.

Commissioner Newman expressed that he firmly believed that a fair and balanced performance appraisal should not be buried. While admonishing the Agency for the prolonged appeal process, he motioned for the performance appraisal not to be sealed.

Motion by Newman to not seal the Performance Appraisal; seconded by Pate. Carried.

Brummitt: No.

12. Richard Pinckard, Esq., on behalf of **James Pitts**, Deputy District Attorney IV, requesting the sealing of a Performance Appraisal for the period June 9, 2000 to June 9, 2001.

RECOMMENDATION: Continue to the Commission's next meeting to allow the parties to provide additional input.

Continued.

Extension of Temporary Appointments

13. Health and Human Services Agency

- A. 1 In-service Education Coordinator (John Allen)
- B. 1 Program Specialist I (Bruce Campbell)
- C. 9 Protective Services Worker I's (Cheryl Berglund, Diana Castens, Sara Eaton, Gabriela Espinosa, Kelly Fischetti, M. Rene Hendricks, Anneliese Martinez, Tammy Rogers, Kathryn Wieand)
- D. 5 Residential Care Worker Trainees (Delia Caravajal, Shanee Small, Hugo Magdaleno, Pamela Grayson, Mirna Rodriguez)
- E. 2 Residential Care Worker I's (Lavone Bradley, Connie Sorgdrager)
- F. 1 Residential Care Worker II (Tammie Bryant)
- G. 1 Social Worker II (Carrie McGaw)

14. Retirement Office

- 1 Retirement Personnel Analyst (Janet Fisher)

RECOMMENDATION: Ratify Item Nos. 13 & 14.

Item Nos. 13 and 14 Ratified.

15. Public Input.

ADJOURNMENT: 3:45 p.m.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE DECEMBER 5, 2001.